UNITED STATES PATENT AND TRADEMARK OFFICE

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UNITED STATES PATENT AND TRADEMARK OFFICE

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Technology Center 2100

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Application Number: 10/602,901
Filing Date: June 24, 2003
Appellant(s): FABRIZI ET AL.

Karuna Ojanen
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 6/12/2007 appealing from the Office

action mailed on 1/4/2007.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

| 2003/0069953 | Bottom | 4-2003 |
| 2002/0052807 | Han | 5/2002 |

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that

form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 19-25, 27-30, 33-42, and 45-53 are rejected under 35 U.S.C 102(e) as

being anticipated by **Bottom et al. (Bottom** hereinafter) (US PG Pub 2003/0069953).

With respect to claim 19, **Bottom** teaches **a system for configuring a highly-available data processing system, comprising:**

"an inspection agent adapted to:

automatically explore and inspect a production server" as figure 4, reference numerals 405 and 410 (**Bottom** Figure 4).

"identify and collect a plurality of production server computer parameters" as figure 4, reference numeral 410 (**Bottom** Figure 4).

"generate a production server computer parameter database of the production server computer parameters necessary to configure the production server to be the highly-available data processing system" as according to one embodiment, health and performance monitoring is performed by extracting each server module's health and performance metrics, which are stored in a local database. Such health and performance metrics are made available for various applications, such as a graphical user interface (GUI) and a web-server interface (**Bottom** Paragraph 0020 & 0029).

"an expert-system module adapted to:

read the production server computer parameter database" as figure 4, reference numeral 410 (**Bottom** Figure 4).

"generate a project database comprising the production server computer parameters, a plurality of default questions and a plurality of additional questions, if any, and the respective production server computer parameters derived from the answers used to define the highly-available data processing

system" as information that is static in nature, such as serial number of the device

plugged in, chassis ID number of the chassis in which the device is plugged into, or slot

ID number in the chassis in which the device is plugged into, may only be extracted

from the in-memory database 525 once or whenever necessary, and saved for future

reference. Dynamic information, such as temperature level, power level, or CPU

utilization, on the other hand, may be extracted periodically or whenever necessary.

The middleware 535 may store the information in a memory database 525 (**Bottom**

Paragraph 0055). The project database/database 525 stores the parameters and   •

questions and answers related to the parameters such as level of temperature, power

and CPU utilization.

Further Bottom teaches that with predetermined performance and health

thresholds, the information extracted by the middleware 535 may help determine

whether any of the thresholds are being violated (**Bottom** Paragraph 0056). Examiner

interprets determining if any of the thresholds are violating predetermined performance

and health thresholds as additional questions.

"select from a plurality of predefined rules those rules pertinent to analyze

the project database; and define the highly-available data processing system

from the production server computer parameter database" as (Figure 4 and

Paragraph 0050).

With respect to claim 20, **Bottom** teaches **"the system for configuring a**

highly-available data processing system of claim 19 further comprising a user-

interactive module by which to display the project database to a user" as the

middleware 535 may provide these metrics to be stored in a local database 525, and at

the same time may make the database of metrics available to higher level applications

including graphical user interface (GUI) and web-server interface 520 (**Bottom**

Paragraph 0054).

With respect to claim 21, **Bottom** teaches **"the system for configuring a**

highly-available data processing system of claim 20 wherein the user-interactive

module further comprises a menu by which a user may enter additional answers

to the questions and additional information to the project database to define the

highly-available data processing system" as the HA management system 100 may

provide for the users to define low and high-alert thresholds and propagation of health

and performance alerts, and the users may also define the intervals at which the system

performance and utilization metrics are computed (**Bottom** Paragraph 0034).

With respect to claim 22, **Bottom** teaches **"the system for configuring a**

highly-available data processing system of claim 20 wherein the user-interactive

module permits a user to select the computer parameters defining the highly-

available data processing system" as the HA management system 100 may provide

for the users to define low and high-alert thresholds and propagation of health and

performance alerts, and the users may also define the intervals at which the system

performance and utilization metrics are computed (**Bottom** Paragraph 0034).

With respect to claim 23 and 24 **Bottom** teaches **"wherein the expert system client-side module determines and selects additional questions that require answers in order to analyze the project database and wherein the expert system client-side module automatically inspects the project database to determine answers to the additional questions"** as predetermined performance and health thresholds, the information extracted by the middleware 535 may help determine whether any of the thresholds are being violated (**Bottom** Paragraph 0056). Examiner interprets determining if any of the thresholds are violating predetermined performance and health thresholds as additional questions.

With respect to claim 25 **Bottom** teaches **"wherein the computer processing parameters to define the highly-available data processing system comprise one or more of the following: names of one or more computer processing machines, types of the one or more computer processing machines, operating systems of the one or more computer processing machines, mass-storage connected to the one or more computer processing machines, magnetic tape storage connected to the one or more computer processing machines, a plurality of system values of the one or more computer processing machines, or one or more network attributes of the one or more computer processing machines"** as dynamic information, such as temperature level, power level, or CPU utilization, on the other hand, may be extracted periodically or whenever necessary. The middleware 535 may

store the information in a memory database 525 (**Bottom** Paragraph 0055). Examiner

interprets Bottoms disclosure as plurality of system values.

With respect to claim 27, **Bottom** teaches **"wherein the computer processing**

parameters to define the highly-available data processing system comprises one

or more user libraries, one or more software objects, or data used by the

production server" as the HA management system 100 may provide for the users to

define low and high-alert thresholds and propagation of health and performance alerts,

and the users may also define the intervals at which the system performance and

utilization metrics are computed (**Bottom** Paragraph 0034). Examiner interprets the

health and performance data as data used by production server.   .

With respect to claim 28, **Bottom** teaches **"wherein the computer processing**

parameters to define the highly-available data processing system comprises one

or more user programs that exploit operating system commands relevant to the

highly-available data processing system" as according to one embodiment, the

infrastructure may require a dedicated development server 186 to facilitate installation

and configuration of operating system, services, and applications on its production

servers (Bottom Paragraph 0039).

With respect to claim 29 and 30, Bottom teaches **"wherein the expert system**

client side module further generates and implements one or more

recommendations or corrective actions to define the highly-available data

processing system" as according to one embodiment of the present invention, a

server in the chassis is automatically elected as a managing server or active server to

host system management. The active server runs service for all servers operating in

the chassis. Upon failure of the managing server, such as when not meeting a certain

predetermined criteria, another server is elected as active server to replace the previous

active server to continue with the management of the chassis and remaining servers

(**Bottom** Paragraph 0019).

Groups of claims 33-38, 39-41, 45-46 and 47-53 are essentially the same as

group of claims 19-25, and 27-30 except they set forth the claimed invention as an

apparatus, a method and a program product and are rejected for the same reasons as

applied hereinabove.

With respect to claim 42, **Bottom** teaches **"the expert-system client side**

software agent automatically generating a report of the analysis of the plurality of

computer parameters using the expert knowledge database" as each server

module or blade 510 may run an application or service, which via hardware device

driver may communicate with the management device 515 and the operating system

545 to report health and performance metrics on each of the modules 510 (**Bottom**

Paragraph 0053).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of

the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of

the various claims was commonly owned at the time any inventions covered therein

were made absent any evidence to the contrary. Applicant is advised of the obligation

under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was

not commonly owned at the time a later invention was made in order for the examiner to

consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g)

prior art under 35 U.S.C. 103(a).

Claims 26, 31-32, and 43-44 are rejected under 35 U.S.C. 103(a) as being

unpatentable over **Bottom et al.** (US PG Pub 2003/0069953) as applied to claims 19-

25, 27-30, 33-42, and 45-53 in view of **Han et al.** (**Han** hereinafter) (U.S. PG Pub

2002/0052807).

With respect to claims 26, 31-32, and 43-44 **Bottom** does not explicitly teaches,

"processing system comprises one or more file systems," "wherein project

database is relation database," "files structured as XML files" and "generating an HTML report."

However, **Han** discloses **"processing system comprises one or more file systems," "wherein project database is relation database," "files structured as XML files" and "generating an HTML report"** as the dimensions of the database/file system of the web-enabled and IP-based architectures are either predominately static or only awkwardly modified (e.g., using the relational database technology wherein additional databases are mapped into the primary database/file system using a double interaction technique) (**Han** Paragraph 0015). The product definition data 60 is an XML data structure schema, and is designed to be flexible (e.g., can have many optional elements) (**Han** Paragraph 0067). The HyperText Markup Language (HTML) facilitates how documents can be presented on a screen, e.g., as web pages (**Han** Paragraph 0008).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teaching of the cited references because Han's teachings would have allowed Bottom to have easy access to data, data structure schema which is designed to be flexible and to facilitate presentation of data to a user.

A.   35 U.S.C. § 101 rejection of claims 19-53.

In view of the arguments in Appeal Brief filed on 6/12/2007, the 101 rejections have been withdrawn.

B.   § 102(e) rejection of claims 19-25, 27-30, 33-42 and 45-53 over Bottom.

Appellant argues that **Bottom** does not teach, **"generate a computer**

parameter database of the parameters necessary to configure the production

server to be the highly-available data processing system" as required by

independent claims 19, 33 and 39.

Appellant further states that "Appellants present the type of parameters

necessary to configure a data processing system, e.g., a name of the server, type of

machine and operating system, mass-storage available, presence or absence of

magnetic tape mass-storage, system values defining its behavior, network attributes, file

system and structure, user libraries of software objects, data, and user programs; it is

common sense that the temperature, power level, CPU utilization, memory utilization,

etc., the parameters alleged to be the identical parameters collected by the inspection

agent, cannot be configured as a highly-available data processing system."

First of all examiner would like to point out that the type of parameters pointed

out by the Appellant in the arguments are not present in the independent claims.

In response to the Appellant's arguments, the arguments were fully considered

but were not deemed persuasive. Examiner respectfully submits that **Bottom** teaches

"generate a computer parameter database of the parameters necessary to

configure the production server to be the highly-available data processing

system" as according to one embodiment, health and performance monitoring is performed by extracting each server module's health and performance metrics, which are stored in a *local database*. Such health and performance metrics are made available for various applications, such as a graphical user interface (GUI) and a web-server interface (**Bottom** Paragraph 0020 & 0029).

Further, **Bottom** teaches the HA management system 100 system management delivers to the Internet data center a comprehensive, disciplined means for system administration, system health monitoring, and system performance monitoring. Since the server's health and performance metrics may be used to initiate automated deployment processes, the source of those metrics would have to be reliable. The metrics used to initiate the automated processes might include *CPU, physical or virtual memory, disk and network IO or storage capacity utilization*. Additionally a failure alert or cluster load alert responding to prescribed SLAs (Service Level Agreement) might initiate an automated deployment process. Therefore, the reliability afforded by High-Availability management (HA management) is instrumental in enabling robust automation capacity (**Bottom** Paragraph 0028).

Further, Appellant argues that **Bottom** does not teach, **"a knowledge database having a plurality of default questions to be answered to define highly-available data processing environment"** as required by independent claims 47.

In response to the preceding argument examiner respectfully submits **Bottom**

teaches, **"a knowledge database having a plurality of default questions to be**

answered to define highly-available data processing environment" as information

that is static in nature, such as serial number of the device plugged in, chassis ID

number of the chassis in which the device is plugged into, or slot ID number in the

chassis in which the device is plugged into, may only be extracted from the *in-memory*

database 525 once or whenever necessary, and saved for future reference. Dynamic

information, such as temperature level, power level, or CPU utilization, on the other

hand, may be extracted periodically or whenever necessary. The middleware 535 may

store the information in a memory database 525 (**Bottom** Paragraph 0055). The project

database/database 525 stores the parameters and questions and answers related to

the parameters such as level of temperature, power and CPU utilization.

Further Bottom teaches that with predetermined performance and health

thresholds, the information extracted by the middleware 535 may help determine

whether any of the thresholds are being violated (**Bottom** Paragraph 0056). Examiner

interprets determining if any of the thresholds are violating predetermined performance

and health thresholds as questions.

Further, **Bottom's** figure 4 teaches active manager may report replicated

information relating to a failed device so that the failed device may efficiently be

replaced with a new device. The active manager may continue to manage *without any*

reconfiguration or update despite switching the failed device to the new device in

processing block 420. Since the process is non-stop and with out any reconfiguration or

update, therefore the default questions never change.
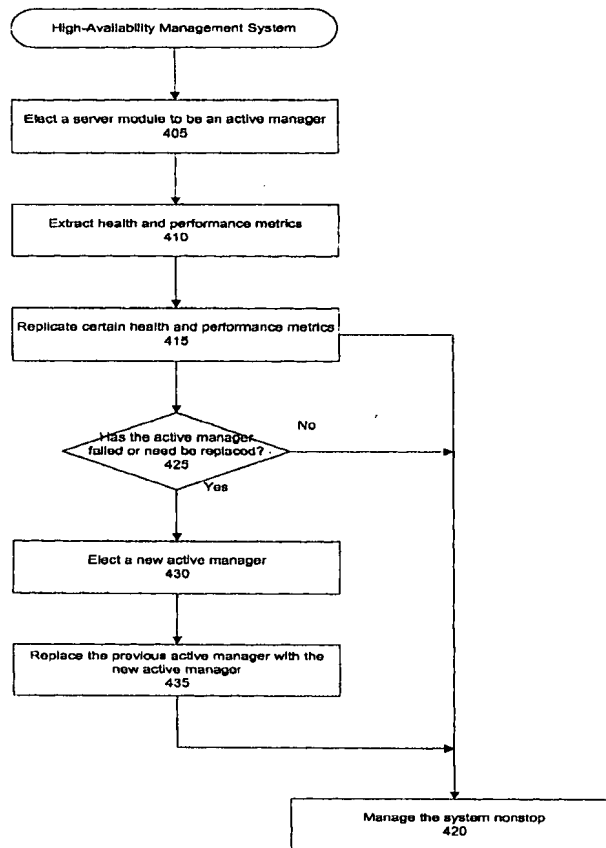
Figure 4

Further, **Bottom** teaches module characteristics along with their associated

chassis identifications, slot identifications, and relative module types may be stored in a

management system database 665, or somewhere else, such as on a disk drive,

coupled to the management system 605 (**Bottom** Paragraph 0074). The module

characteristics are known, the management system 705 may continue to operate

without needing to be reconfigured by stopping and updating. Hence, providing

uninterrupted management of the replacement module 721 serving the same purpose

as the one replaced 712, unless specifically determined otherwise (**Bottom** Paragraph

0077). Therefore, the default questions always stay the same and are not being

reconfigured or updated.

C.   § 103(a) rejection of claims 26, 31-32 and 43-44 over Bottom in view of Han.

Appellant's arguments directed towards the rejections of claim 26, 31-32 and 43-

44 reiterate deficiencies Appellant made in the rejection of the independent claims 19,

33, 39 and 47 and do not address any new points. Therefore examiner submits that if

the rejection of the independent claims is deemed proper, the rejection of claims 26, 31-

32 and 43-44 should also be upheld.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the

Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Usmaan Saeed

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